IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC.CIVIL APPLICATION NO.25 OF 2005

Mangesh Vinod Dave ...Applicant

vs.

Dipti Mangesh Dave ...Respondent

Mr.Uday P.Warunjikar for the Applicant
Ms Purnima Bhatia for the Respondent

CORAM: A.S.OKA,J.
DATE : APRIL 26,2005.

P.C.:

1. Heard Advocates for the parties. Applicant is the husband and Respondent is the wife. The prayer made in this Application is for transfer of Hindu Marriage Petition No.48 of 2003 which is now renumbered as A-208/2004 pending in the Family Court at Mumbai to the Court at Civil Judge (Senior Division) at Panvel.

2. The said Petition was filed by the Applicant initially in the Court of Civil Judge (Senior Division) at Panvel, inter alia for decree of divorce. The Respondent-wife filed Petition No.C-187 of 2003 under Section 18 of Hindu Adoption and Maintenance Act, 1956 in the Family court at Mumbai.

3. The Application being M.C.A.No.59 of 2003 was made by the Respondent-wife in this Court praying for transfer of the said Petition filed by the Applicant-husband to the Family Court at Mumbai. By the Judgment and Order dated 27th November 2003

the said Application was allowed and as a result, the said Petition was transferred to the Family Court at Mumbai. By order dated 13th December 2004 passed by the learned Judge of the Family Court Petition No.C-187 of 2003 filed by the Respondent-wife under Section 18 of the said Act of 1956 was ordered to be returned to the Respondent for presentation to proper Court viz. C.J.S.D., Panvel.

4. It is not in dispute that the said order passed by the learned Judge of the Family Court has been challenged by the Respondent by preferring a Family Court Appeal in this Court and the said Family Court Appeal has been admitted. It is also not in dispute that the order passed by the learned Judge of the Family Court is not stayed in the Family Court Appeal.

5. Shri Warunjikar, learned Counsel for the Applicant submitted that the earlier order of transfer was passed only on the ground that the Petition for maintenance was pending in the Family Court at Mumbai. He submitted that now the said Petition for maintenance is not pending in the Family Court and therefore, Petition filed by the Applicant for divorce needs to be re-transferred to the Court at C.J.S.D., Panvel. It is submitted that the ground on which the earlier order of transfer was passed no longer survives.

6. I have considered the submissions. The perusal of the Judgment and Order dated 27th November 2003 passed by this

Court shows that one of the ground on which earlier order of transfer was passed was that maintenance Petition filed by the Respondent-wife was pending at Family Court, Mumbai. While passing the order of transfer, this Court also observed that additional advantage of transferring the Petition to the Family Court at Mumbai is that counselling services are available at Family Court.

7. On plain reading of the Judgment and Order of this Court it is apparent that pendency of Petition filed by the Respondent-wife was not the only ground for passing the order of transfer. In any event, order passed by the learned Judge of the Family Court in the Petition filed by the Respondent returning the Petition has been challenged in this Court and the Appeal preferred against the said order is pending for final hearing. In that sense, order returning the Petition has not attained finality. If the Respondent succeeds in the said Appeal, the Petition filed by her is bound to be entertained by the Family Court at Mumbai.

8. Apart from other facts it is to be noted here that the Respondent-wife is resident of Malad, Mumbai.

9. In view of this position, no case is made out for transfer. Application is rejected.

JUDGE.